

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Larry Moyer | : | |
| | : | |
| v. | : | C-2015-2511904 |
| | : | |
| PPL Electric Utilities Corporation | : | |

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision dismisses a formal complaint filed by a customer of an electric distribution company who avers that the company has threatened to terminate his service. In addition, the complainant averred that he owns and operates a photovoltaic solar facility at the service address and that he was being charged incorrectly by the company pursuant to the Commission’s virtual meter aggregation regulations. The complaint is dismissed because the complainant has failed to satisfy his burden to demonstrate that the company violated the Public Utility Code, a Commission order or regulation, or a Commission-approved tariff of the company.

HISTORY OF THE PROCEEDING

On October 29, 2015, Larry Moyer filed a formal complaint with the Pennsylvania Public Utility Commission against PPL Electric Utilities Corporation (PPL or the company), docket number C-2015-2511904. In his complaint, Mr. Moyer averred that PPL is threatening to terminate his utility service. In addition, Mr. Moyer included an attachment to his

complaint wherein he raised issues regarding PPL's compliance with the Commission's virtual meter aggregation regulations. Mr. Moyer raised additional issues in the attachment as well, including issues pertaining to termination notices and bills he has received from PPL. For relief, Mr. Moyer requested, among other things, that the Commission issue a public reprimand of PPL for misconduct and take other actions to correct the issues raised in his complaint.

On November 24, 2015, PPL filed an answer in response to Mr. Moyer's complaint. In its answer, PPL admitted or denied the various averments Mr. Moyer raised in his complaint. In particular, PPL provided significant detail regarding two prior complaints filed by Mr. Moyer that pertained to averments raised in the instant complaint. PPL also provided significant detail regarding virtual meter aggregation in response to what Mr. Moyer averred. PPL also provided an answer to the relief Mr. Moyer requested in his complaint, noting again the relationship of the relief requested to the two prior complaints he filed. PPL concluded its answer by requesting that Mr. Moyer's complaint be denied in its entirety.

Also on November 24, 2015, PPL filed preliminary objections in response to Mr. Moyer's complaint. In its preliminary objections, which were accompanied by a notice to plead, PPL raised three grounds for dismissal. First, PPL argued that the virtual meter aggregation program and billing process allegations raised in the complaint will be fully resolved in a pending proceeding. Second, PPL argued that the ex parte allegations in the complaint are legally insufficient and fail to state a claim upon which relief can be granted. Third, PPL argued that Mr. Moyer's allegations regarding termination of his service are also legally insufficient and fail to state a claim upon which relief may be granted. Again, PPL requested that Mr. Moyer's complaint be dismissed in its entirety. PPL provided several attachments in support of its preliminary objections.

On December 22, 2015, PPL filed a motion to stay discovery during the pendency of the preliminary objections. On December 23, 2015, Mr. Moyer filed a response to PPL's motion to stay the discovery.

By motion judge assignment notice dated January 5, 2016, the parties were informed that Administrative Law Judge (ALJ) Dennis J. Buckley was responsible to resolve any issues which may arise during the preliminary phase of this proceeding.

By order dated January 13, 2016, ALJ Buckley granted PPL's motion to stay discovery.

On May 19, 2016, the Commission entered an Opinion and Order addressing issues regarding PPL's virtual meter aggregation process in response to Mr. Moyer's prior two complaints in Jay Larry Moyer v. PPL Electric Utilities Corporation, Docket Nos. C-2011-2273645 and C-2014-2444864 (Opinion and Order entered May 19, 2016).

On February 1, 2017, Mr. Moyer filed with the Pennsylvania Commonwealth Court an application for relief in the form of a motion to request further proceedings. In that motion, Mr. Moyer raised concerns regarding the scope of the Commission's authority and the ramifications of the Commission's actions with regard to PPL's approval of Mr. Moyer's photovoltaic renewable energy system. Mr. Moyer raised six issues with the Commonwealth Court and requested that the Commonwealth Court order the Commission to hold further hearings where he can present issues not previously adjudicated.

On February 10, 2017, PPL filed a motion to stay the instant proceeding pending the disposition of Mr. Moyer's appeal to the Commonwealth Court.

On March 13, 2017, the Commonwealth Court, among other things, denied Mr. Moyer's appeal.

On May 22, 2017, PPL filed a motion for summary judgment. In its motion, which was accompanied by a notice to plead, PPL raised four arguments why Mr. Moyer's complaint should be dismissed. First, PPL argued that the virtual meter aggregation program and billing process allegations are barred by the doctrines of res judicata and collateral estoppel. PPL next argued that Mr. Moyer's allegations in his complaint regarding the amount to be credited to

his account are moot. PPL's third and fourth arguments reiterate the preliminary objections previously raised that Mr. Moyer's allegations regarding ex parte communications and improper termination notices fail to state a claim upon which relief may be granted. PPL concluded its motion by requesting that the motion be granted and Mr. Moyer's complaint be dismissed in its entirety and with prejudice.

On July 27, 2017, Mr. Moyer filed a document with six attachments wherein he raised "three new violations in PPL's treatment of my two PPL accounts which are part of virtual meter aggregation." Mr. Moyer explained that these recent incidents are continuing evidence of the ongoing disarray of PPL's methodology for virtual meter aggregation which involves manual procedures PPL applies only to virtual meter aggregation. The attachments Mr. Moyer provided include reporting data, monthly bills, a termination notice and two pieces of correspondence. It is unclear whether this filing was in response to PPL's motion. However, given that Mr. Moyer is pro se, and that the Commission's regulations allow for the liberal construction of its rules to "secure the just, speedy and inexpensive determination of every action or proceeding," 52 Pa.Code § 1.2(a), Mr. Moyer's July 27, 2017 filing was treated as his answer to PPL's motion.

On November 7, 2017, Mr. Moyer filed a second appeal to the Commonwealth Court alleging moribund inaction by the Commission with regard to his complaint.

On November 9, 2017, a judge change notice was issued by the Commission indicating that the ALJ in this case had been changed from ALJ Buckley to me and setting an initial call-in telephonic hearing for this matter for Monday, December 11, 2017 at 10:00 a.m. On November 22, 2017, a prehearing order was issued setting forth various rules that would govern the hearing.

On November 20, 2017, an order was issued granting in part and denying in part PPL's motion for summary judgment. Mr. Moyer's averments regarding inappropriate ex parte activities by the Commission or the company were stricken from the complaint. All other issues raised in the formal complaint were allowed to be heard at a hearing.

On November 28, 2017, Mr. Moyer requested that the hearing scheduled for December 11, 2017 be continued because he only received two weeks' notice. PPL opposed the continuation of the hearing beyond an additional 30 days. By order dated December 5, 2017, Mr. Moyer's request for a continuance was granted and the hearing was rescheduled for January 8, 2018. A hearing cancellation/reschedule notice was issued formally rescheduling the case.

On January 8, 2018, the hearing convened as scheduled. Mr. Moyer appeared pro se and presented two exhibits that were admitted into the record. Devin Ryan, Esquire, appeared on behalf of PPL and presented two witnesses who sponsored eight exhibits that were admitted into the record. A transcript of 90 pages was created. The record of this proceeding closed on February 6, 2018 when the transcript was submitted to the Commission.

Finally, on January 17, 2018, the Commonwealth Court issued an order granting the Commission's motion to quash Mr. Moyer's appeal filed on November 7, 2017.

Mr. Moyer's complaint is ready for disposition. For the reasons discussed below, the complaint will be dismissed.

FINDINGS OF FACT

1. The complainant in this case is Larry Moyer.
2. The respondent in this case is PPL Electric Utilities Corporation.
3. The service address is 73 Woods Road, Klingerstown, PA.

4. Moyer Exhibit Number 1 is the formal complaint Mr. Moyer filed with the Commission against PPL on October 29, 2015, including multiple pages of attachments. Moyer Exh. No. 1.¹

5. Mr. Moyer owns and operates a photovoltaic (PV) solar facility at the service address under the provisions of the Commission's virtual meter aggregation regulations. Moyer Exh. No. 1.

6. Mr. Moyer has two separate meters for two separate accounts for which he receives two separate bills. Moyer Exh. No. 1; Tr. 25.²

7. By letter dated October 5, 2015, PPL notified Mr. Moyer of its intent to terminate service at the service address. Moyer Exh. No. 1.

8. PPL sent Mr. Moyer a 10-day shut off notice dated October 15, 2015 with a total amount due of \$788.32. Moyer Exh. No. 1.

9. PPL called Mr. Moyer on October 22, 2015 indicating its intent to terminate service at the service address. Moyer Exh. No. 1.

10. Moyer Exhibit Number 2 is entitled "statement to be entered into the record on January 8, 2018" submitted by Mr. Moyer detailing several complaints Mr. Moyer has with regard to the Commission's handling of his complaint. Moyer Exh. No. 2.

11. Moyer Exhibit Number 2 concludes: "based on the foregoing, I have decided not to submit further evidence, and I have no further comments." Moyer Exh. No. 2.

¹ Although formal complaints are typically not considered part of the formal record, in this case, Mr. Moyer requested that his formal complaint be admitted into the record and PPL did not object. Tr. 11-12. Therefore, Mr. Moyer's formal complaint is formally part of the record of this proceeding.

² The meter connected to Mr. Moyer's solar panels is referred to as the "host meter" and the meter connected to his residence is referred to as the "satellite meter."

12. Cheryl Oehler is a customer service billing specialist for PPL in the company's revenue operations department and is responsible for billing applications and policies and procedures for PPL including net metering and virtual metering. Tr. 18-19.

13. Ms. Oehler is the primary customer service contact for electric shopping issues, including net metering and virtual metering processes. Tr. 20.

14. PPL Exhibit Number 6 is a copy of PPL's current net metering aggregation tariff. PPL Exh. No. 6; Tr. 22.

15. Any excess unused generation continues to be banked or accumulated until May 31 of every year and, at that point, is cashed out at the electric distribution company's price to compare and paid to the customer generator. Tr. 23.

16. Meter aggregation is the process by which the eligible renewable customer generator is able to aggregate the properties that he or she owns and operates within two miles of each other for the purposes of net metering. Tr. 23-24.

17. Meter aggregation can be physical, where the generating source is physically connected to the home, or virtual, where it is not physically connected. Tr. 24.

18. Mr. Moyer's solar panels are not physically connected to his home. Tr. 24.

19. PPL Exhibit Number 7 is a copy of an Opinion and Order entered by this Commission on May 19, 2016 on two complaints Mr. Moyer filed against PPL at docket numbers C-2011-2273645 and C-2014-2444684. PPL Exh. No. 7.

20. In the Commission's Opinion and Order entered May 19, 2016, the Commission directed PPL to pay Mr. Moyer \$739.98. PPL Exh. No. 7; Tr. 27.

21. PPL Exhibit Number 11 is a letter dated May 25, 2016 from counsel for PPL to the Commission's Secretary explaining that a credit of \$738.61 was posted to Mr. Moyer's account on May 24, 2016. PPL Exh. No. 11; Tr. 28-29.

22. PPL Exhibit Number 1 is the account statement for Mr. Moyer's account that indicates the credit of \$783.61 applied on May 24, 2016. PPL Exh. No. 1; Tr. 30.

23. The late payment charges that PPL imposed on Mr. Moyer's account while his initial complaint was pending were removed at a later date. Tr. 32-34.

24. Tammy Nalesnik is employed by PPL as a customer service representative and works in-depth with customers and contractors with matters related to net metering and virtual metering. Tr. 38.

25. Ms. Nalesnik has been employed by PPL for ten years and has worked with net metering customers for eight years. Tr. 38-39.

26. PPL Exhibit Number 12 is a copy of rule 10 of PPL's electric tariff governing disconnections and reconnections of service to customers. PPL Exh. No. 12; Tr. 40.

27. PPL may terminate the supply of electric service and remove the company's equipment from the customer's premises upon notice to customers when appropriate under certain conditions, including nonpayment of an undisputed delinquent account associated with service provided by the company. PPL Exh. No. 12; Tr. 41.

28. Mr. Moyer received termination notices dated October 5, 2015 and October 15, 2015 from PPL because he did not pay his current bills after the dispute was filed with the Commission. Tr. 41.

29. The total balance on Mr. Moyer's residential account as of October 9, 2015 was \$865.65 with the overdue balance going into the cycle being \$788.32. PPL Exh. No. 1; Tr. 43.

30. Late charges were imposed because there was an undisputed amount that was not paid. Tr. 43.

31. PPL Exhibit Number 2 is the account statement for Mr. Moyer's solar account. PPL Exh. No. 2; Tr. 43.

32. The solar statement of account shows the overdue balance that is reflected on the October 5, 2015 termination notice of \$365.88 with an overdue balance coming into that bill period of \$348.13. PPL Exh. No. 2; Tr. 44-45.

33. PPL has never terminated service to either of Mr. Moyer's accounts because the company determined it would not terminate service while the complaints were pending, called a litigation hold. Tr. 45-46.

34. Mr. Moyer received termination notices on his accounts while the complaints were pending because the litigation holds that were put in place automatically expired due to the length of the litigation. Tr. 46-47.

35. PPL canceled the shut off notices after Mr. Moyer called PPL when the notices were sent following the expiration of the litigation hold. Tr. 47.

36. A net metering customer usually will have a single bidirectional meter that would run backwards to reflect the amount of electricity generated in excess of the customer's usage when the electricity generated offsets the customer's own usage. Tr. 48.

37. If the customer has excess generation carrying into the next billing series the excess is banked to offset future usage. Tr. 48.

38. With virtual metering aggregation customers, the goal remains giving the customer credit for the energy they have produced but two meters are considered instead of one. Tr. 49.

39. The process used to consider both meters in virtual meter aggregation is a manual process. Tr. 50.

40. PPL maintains a computer-generated spreadsheet for each customer that tracks on a monthly basis the excess generation at the host location where the solar panels are located and the allocation of the excess kilowatt hour to each satellite location. Tr. 51.

41. The spreadsheet will automatically calculate the credit due to the customer's generator satellite account for each billing period. Tr. 51.

42. For every kilowatt hour used, a credit for the total value of the distribution, generation and transmission cost is applied. Tr. 52.

43. Customers such as Mr. Moyer remain responsible for paying customer charges and possibly a demand charge because a non-residential meter is being used. Tr. 53.

44. PPL Exhibit Number 5 is an internal PPL manual that was approved by the Commission that explains how the company bills virtual meter aggregation customers. PPL Exh. No. 5; Tr. 54-55.

45. PPL Exhibit Number 10 is a spreadsheet showing the crediting history of Mr. Moyer's account, including the billing date, the actual meter reading from the host meter and the specific dollar rate for the excess generation and any banked amount to be applied, among other things. PPL Exh. No. 10; Tr. 56-58.

46. The credits noted in PPL Exhibit Number 10 are applied to the account statement in PPL Exhibit Number 1. PPL Exh. Nos. 1 and 10; Tr. 59-60.

47. Mr. Moyer's two meters are read on the same date, but the bills do not necessarily generate out of the system at the same time. Tr. 63.

48. The spreadsheet used to calculate the amount to apply as credit for virtual metering calculations does not include payment information. PPL Exh. No. 10; Tr. 66.

DISCUSSION

Legal Standard

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950) (Se-Ling Hosiery). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Mr. Moyer averred that PPL is threatening to terminate his utility service and provided details regarding termination notices and bills he has received from PPL, among other things. Mr. Moyer, therefore, has the burden of proof in this proceeding.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm’n, 768 A.2d 1217 (Pa.Cmwlth. 2001) (Milkie); *see also*, Burleson v. Pa. Pub. Util. Comm’n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

In addition, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable

mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980) (Norfolk); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth. 1984).

The Commission's alternative energy portfolio regulations are also relevant to this proceeding. For example, the Commission's regulations define "virtual meter aggregation" as follows:

The combination of readings and billings for all meters regardless of rate class on properties owned or leased and operated by a customer-generator by means of the EDC's billing process, rather than through physical rewiring of the customer-generator's property for a physical, single point of contact. Virtual meter aggregation on properties owned or leased and operated by the same customer-generator and located within 2 miles of the boundaries of the customer-generator's property and within a single EDC's service territory shall be eligible for net metering. . . .

52 Pa.Code § 75.12. Furthermore, the Commission's regulations define "net metering" as:

The means of measuring the difference between the electricity supplied by an electric utility or EGS and the electricity generated by a customer-generator when any portion of the electricity generated by the alternative energy generating system is used to offset part or all of the customer-generator's requirements for electricity.

52 Pa.Code § 75.12.

Finally, it is noted that, in the order granting in part and denying in part PPL's motion for summary judgment, issued on November 20, 2017, portions of Mr. Moyer's complaint alleging inappropriate ex parte activities by the Commission or the company were stricken from the complaint. PPL's argument, however, that portions of Mr. Moyer's complaint should be stricken due to res judicata was denied because there were several averments raised in

the current complaint that were not litigated in the prior complaint, namely Mr. Moyer's averments of "further evidence of misconduct on the part of PPL" and "three new violations." Likewise, PPL's argument that Mr. Moyer's averments regarding billing credits should be stricken was also denied because, for example, additional billing issues may have arisen since PPL gave Mr. Moyer his last credit. Finally, PPL's arguments that Mr. Moyer's averments regarding improper termination of service also fail to state a claim upon which relief can be granted were also dismissed because Mr. Moyer's averments, when viewed in the light most favorable to him, could give rise to a violation of the Commission's termination regulations.

As noted in the order, these portions of PPL's motion were denied because the standard for granting a motion for summary judgment and dismissing a complaint prior to a hearing is high and pro se complainants should have the opportunity to explain their case orally at a hearing and not be dismissed on the basis of a preliminary motion. The order noted that, at a hearing, Mr. Moyer will be required to prove his claims by a preponderance of the evidence and that all decisions of the Commission must be supported by substantial evidence. This is a higher standard than that used to survive PPL's motion.

In this case, however, Mr. Moyer's complaint will be rejected because, even after being given an opportunity to explain this case orally at a hearing, he has failed to satisfy his burden to demonstrate that PPL violated, in any way, the Public Utility Code, a Commission order or regulation, or a Commission-approved tariff of the company with regard to the service provided to him.

Position of the Parties

In this case, Mr. Moyer argued in his formal complaint that PPL is threatening to terminate his service and included an attachment providing additional details regarding his complaint. The attachment included issues arising from Mr. Moyer's two prior complaints filed at the Commission against PPL that he believed have "failed to resolve numerous issues" as well as "further evidence of misconduct on the part of PPL." At the hearing, Mr. Moyer did not testify but instead moved for the admission of his formal complaint, and the accompanying

attachment, as well as a document dated January 8, 2018 entitled “statement to be entered into the record.” The January 8th statement details several complaints Mr. Moyer has with the Commission’s handling of his formal complaints and concludes “based on the foregoing, I have decided not to submit further evidence, and I have no further comments.” Mr. Moyer presented no other evidence in this case in support of his complaint.

More specifically, Mr. Moyer explained that his complaint is related to issues then pending before the Commission in two other complaint cases he filed but which he believes have failed to resolve the issues. Moyer Exh. No. 1. Mr. Moyer stated that he has further evidence of PPL’s misconduct. Id. Mr. Moyer explained that he owns and operates a photovoltaic (PV) solar facility at his service address under the provisions of virtual meter aggregation. Id. Mr. Moyer added that there are two accounts at the service address with two meters and two account numbers for which he receives two separate bills. Id. Mr. Moyer provided a recitation of the Commission’s meter aggregation rules and cites to a “reply brief” submitted by PPL when averring that PPL has acknowledged that the bills do not show the actual meter readings and that the billing system cannot currently transfer and aggregate data among separate meters. Id. Mr. Moyer added that there is no indication that the bills are aggregated. Id.

Mr. Moyer also averred in his complaint a lengthy explanation of his concerns regarding what he believes are ex parte violations regarding a termination letter he received from PPL and the issuance of the Initial Decision on Remand regarding one of his prior complaints. Id. As noted above, Mr. Moyer’s averments regarding alleged ex parte violations between the Commission and PPL have been stricken from the complaint because PPL was found on a preliminary basis to be entitled to judgment as a matter of law on this issue. Id.

Finally, Mr. Moyer also averred in his complaint that PPL incorrectly sent him two termination notices, one dated October 5, 2015 and the other dated October 15, 2015, and called him, on October 22, 2015, regarding an impending termination. Id. The amount due on the termination notices was \$788.32 but Mr. Moyer averred that this amount does not match any of the recent bills and cannot be verified by the data that is available on the bills. Id. Mr. Moyer argued that the termination notices and telephone warning were unjustified and unwarranted

because the bills remained in dispute. Id. Mr. Moyer concluded that the Initial Decision on Remand directed PPL to credit Mr. Moyer \$738.98 but that he did not receive such credit. Id. Mr. Moyer concluded by averring that PPL's action violated his due process rights and that he submitted exceptions to the Initial Decision on Remand. Id.

Mr. Moyer attached to his complaint a list of six items he would like the Commission to take as his requested relief, as well as a copy of the October 5, 2015 and October 15, 2015 termination notices. Id. In part, Mr. Moyer requested that "the Commission should, as a clear signal of its displeasure, issue a public reprimand against PPL Electric for its misconduct." Mr. Moyer also requested that the Commission should order that, starting on June 1, 2016, any bills issued to him should show the "combination of readings and billings," as required by Section 75.12.

In his document entitled "statement to be entered into the record on January 8, 2018," Mr. Moyer submitted a seven-page, single-spaced, type-written recitation of what amounts to mostly procedural concerns involving his various complaints filed at the Commission. Moyer Exh. No. 2. For example, Mr. Moyer began his statement by expressing "reservations" about the "informal telephonic venue" and "other factors that give me pause and raise serious doubts in my mind about the fairness and efficacy of this hearing." Id. at 1. Mr. Moyer also referenced in support of his position that PPL's virtual meter aggregation program has been subject to little or no oversight or regulation that the Commission "made no effort to express its displeasure about PPL's conduct." Id. Mr. Moyer also referenced the Commission's "willingness to defer completely to PPL" and stated that his "prospect now of a fair hearing has been precluded by the lack of due process in my formal complaint." Id. at 2.

Mr. Moyer also stated that "the conduct of PPL and the Commission in the ... present case, offers little hope that this hearing can or will produce an impartial, or fair adjudication." Id. Mr. Moyer articulated 18 supposed "mis-steps" in detail, including delays in scheduling the hearing, obstruction of the discovery process and the Commission's purported failure to comply with explicit procedures, timetables, guidelines and handling of documents he filed, among other things. Id. at 2-7. Mr. Moyer stated that the Commission has "demonstrated

a persistent pattern of routine and uncritical deference to PPL” and “neglected its duty to monitor PPL’s billing practices for virtual meter aggregation.” Id. at 7. Mr. Moyer stated that the Commission, “with regard to virtual meter aggregation, has, in effect, permitted PPL to make policy, to interpret the law, to implement procedures at will, and to enforce its own rules as it sees fit.” Id. Mr. Moyer then concluded the statement: “based on the foregoing, I have decided not to submit further evidence, and I have no further comments.” Id.

In response, PPL presented Cheryl Oehler and Tammy Nalesnik who sponsored eight exhibits that were admitted into the record. Ms. Oehler is a customer service billing specialist for PPL and is responsible for policies and procedures for the Company, including net metering and virtual metering. Ms. Nalesnik is a customer service representative who works in-depth with customers and contractors with matters related to net metering and virtual metering. Both Ms. Oehler and Ms. Nalesnik testified regarding the company’s net metering and sponsored exhibits regarding the company’s net metering tariff, the company’s application of the credit to Mr. Moyer’s account, the account statements for both of Mr. Moyer’s accounts and a spreadsheet showing the crediting history for Mr. Moyer’s accounts. Both PPL witnesses testified in support of the company’s position that Mr. Moyer’s complaint is without merit and should be dismissed in its entirety.

In general, PPL presented substantial evidence in response to Mr. Moyer’s complaint in support of the company’s position that the company has at all times acted consistent with the Public Utility Code and Commission regulations and orders and that Mr. Moyer’s complaint should be dismissed.

For example, PPL witness Oehler, who is currently the primary customer service contact for shopping issues, including net metering and virtual metering processes, testified regarding the portion of PPL’s tariff regarding net metering for renewable customer-generators. PPL Exh. No. 6; Tr. 20, 22. Ms. Oehler noted that net metering allows customer generators to use the electricity produced from alternative energy systems to offset all or a part of their electric usage. Tr. 22. Ms. Oehler also testified that meter aggregation is the process by which the eligible renewable customer generator is able to aggregate properties that he or she owns for

purposes of net metering, under certain circumstances. Tr. 23-24. Ms. Oehler specifically noted that meter aggregation can be both physical and virtual and that Mr. Moyer's meter aggregation is virtual – meaning, his solar array is not physically connected to his home. Tr. 24. Ms. Oehler provided additional detail regarding virtual meter aggregation, particularly noting that there are two separate meters, two separate accounts and two separate bills. Tr. 25.

Ms. Oehler then provided specific details regarding Mr. Moyer's two accounts. Tr. 25. Ms. Oehler noted that Mr. Moyer was provided the \$739.98 the company was directed to provide in response to one of Mr. Moyer's prior complaints against PPL. PPL Exh. Nos. 1 and 11; Tr. 27-31. Ms. Oehler also testified regarding various late payment charges PPL charged Mr. Moyer and then credited back to his account. PPL Exh. No. 1; Tr. 31-35.

PPL witness Nalesnik testified regarding the termination notices PPL sent to Mr. Moyer. Tr. 38. In particular, Ms. Nalesnik testified regarding the portion of PPL's tariff that pertains to disconnection and reconnection of service and that service can be terminated due to nonpayment of an undisputed delinquent account. PPL Exh. No. 12; Tr. 40-41. Ms. Nalesnik specifically testified regarding the termination notices that PPL sent to Mr. Moyer, noting that there was a shutoff notice sent on October 5, 2015 for an overdue balance on the solar account of \$365.88 and a second termination notice sent on October 15, 2015 for an overdue balance on the home account for \$788.32. PPL Exh. Nos. 1 and 2; Tr. 41-44. Ms. Nalesnik said that, even though Mr. Moyer had an open complaint at the Commission, he is still obligated to pay his current bill with the company after the dispute is filed. Tr. 41. Ms. Nalesnik testified that Mr. Moyer had not paid the undisputed portion of his bills at the time PPL sent him the termination notices. Tr. 45.

Ms. Nalesnik also testified that service to Mr. Moyer's accounts has never been terminated because, as a courtesy, the company determined that it would not shut off his service while his complaints were still pending. Tr. 45-46. Termination notices were not issued because a "litigation hold" was placed on the accounts. Tr. 46. When those litigation holds automatically expired after 18 months, termination notices were issued. Tr. 46. At that time, Mr. Moyer called PPL and new litigation holds were placed on the accounts. Tr. 47.

Ms. Nalesnik next testified regarding the billing and crediting of Mr. Moyer's accounts. Ms. Nalesnik testified that a net metering customer will usually have one single bidirectional meter that would run backward when more electricity is generated than used. Tr. 48. Ms. Nalesnik testified, however, that, for virtual metering aggregation, the customer is still given credit for the energy they have produced but it is based on two meters instead of one – the excess generation measured from the host account will be aggregated with the usage measured at the satellite account. Tr. 49. Ms. Nalesnik added that the company uses a manual process to aggregate the meters. Tr. 50-51. The process includes creating a spreadsheet for each customer that tracks on a monthly basis the excess generation at the host site and the allocation of that excess to the satellite site with the formulas in the spreadsheet automatically calculating the credit due to the customer's account for each billing period. Tr. 51-52.

Ms. Nalesnik also testified regarding the internal manual PPL uses for performing virtual meter aggregation billing. PPL Exh. No. 5; Tr. 54. Ms. Nalesnik explained that virtual meter customers receive a separate bill for each account and PPL will manually aggregate actual generation produced from the host account during the billing cycle with the usage of the satellite account on a one-to-one kilowatt hour basis with any net excess generation being credited at a dollar amount equal to the full retail rate. Tr. 55. The manual describes how to get the data from the billing system to determine the amount to credit the customer's account. Tr. 55. Ms. Nalesnik added that Mr. Moyer's accounts were prepared consistent with the established billing process. Tr. 56.

Finally, Ms. Nalesnik testified regarding a one-page spreadsheet made especially for this proceeding that shows the crediting history for Mr. Moyers' accounts. The spreadsheet shows billing date, meter readings for both the host and satellite meters, value of the excess generation and credits to be applied, among other things. PPL Exh. No. 10; Tr. 57-58. Ms. Nalesnik also testified where the credits detailed in the spreadsheet are applied to Mr. Moyer's account in PPL Exhibit Number 1. Tr. 60. Ms. Nalesnik concluded:

Q. So based on your review of Exhibit 1 and Exhibit 2, do you believe Mr. Moyer was credited consistent with the Company's

Commission-approved manual billing process for the time period relevant to this complaint?

A. Yes, they are.

Tr. 61.

Disposition

When reviewing the record evidence presented in this proceeding, it is clear that Mr. Moyer has failed to carry his burden to demonstrate that PPL violated the Public Utility Code, a Commission order or regulation, or a Commission-approved tariff of the company. The evidence presented by Mr. Moyer is outweighed by the evidence presented by PPL.

As noted above, Mr. Moyer has the burden of proof in this case. 66 Pa.C.S. § 332(a). To prevail, Mr. Moyer has to establish facts in support of his complaint by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by PPL. Se-Ling Hosiery, *supra*. If Mr. Moyer establishes a *prima facie* case, the burden of going forward with evidence shifts to PPL who has to rebut that evidence or Mr. Moyer will prevail. The burden of going forward with evidence may shift from Mr. Moyer to PPL, but the burden of proof always remains on Mr. Moyer. Milkie. Furthermore, in order to rule in Mr. Moyer's favor, the Commission's decision must be supported by substantial evidence – evidence that a reasonable mind might accept as adequate to support a conclusion. 2 Pa.C.S. § 704; Norfolk.

In this case, Mr. Moyer has failed to rebut PPL's response to the evidence he has presented in support of his complaint. Mr. Moyer's complaint must, therefore, be dismissed.

For example, the only evidence presented by Mr. Moyer that PPL's procedure for his virtual metering aggregation billing is unreasonable, other than general information regarding his accounts, was his assertion in his complaint that "there is no indication in either bill that the two meters are aggregated." Mr. Moyer did not submit any bills – or any other evidence – in this case in support of his position that he was incorrectly billed. Bald assertions, personal opinions

or perceptions do not constitute evidence. Orlando Rivera v. Philadelphia Gas Works, Docket No. C-2010-2164222 (Order entered January 12, 2012); *citing*, Pennsylvania Bureau of Corrections v. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987).

The evidence presented by Mr. Moyer is outweighed by the substantial and detailed evidence presented by the Company that demonstrates how Mr. Moyer's bills are aggregated. This includes a description of the procedures for monthly virtual metering customer calculations and where on Mr. Moyer's account the results of those calculations are considered. PPL witness Nalesnik testified in great detail regarding PPL's manual billing process for its virtual meter aggregation customers and the credits Mr. Moyer received on his account as a result. Tr. 54-61; PPL Exh. Nos. 2, 5 and 10.

In addition, the Commission addressed issues regarding PPL's virtual meter aggregation process in response to Mr. Moyer's prior complaints in Jay Larry Moyer v. PPL Electric Utilities Corporation, Docket Nos. C-2011-2273645 and C-2014-2444864 (Opinion and Order entered May 19, 2016) (May 19, 2016 Order). In that Order, the Commission determined that "nothing in the [Alternative Energy Portfolio Standards] Act, the Code or [the Commission's] regulations mandates that virtual meter aggregation be done via an automated billing process or prohibits the use of a manual billing process." Id. at 22. There, the Commission also found that there was no evidence that PPL's manual billing process is not accurate or inexpensive but agreed that PPL has adequately explained why it continues to use a manual billing process for its customer-generators that re-enrolled in its virtual meter aggregation program. Id. at 23. The Commission added that "given the small number of its customers that are enrolled in virtual meter aggregation and the cost that would be necessary to upgrade its billing system, automating its billing process would not be a prudent expense at this time." Id. The Commission also rejected Mr. Moyer's request both to require PPL to issue him one bill for both his accounts and to include additional information on his separate bills. Id. at 25-29.

Mr. Moyer has not presented any evidence in this proceeding that warrants disturbing these findings.

With regard to Mr. Moyer's averments that he was improperly sent termination notices by PPL, Mr. Moyer provided a detailed explanation of the termination notices he believes were inappropriately sent to him, as well as copies of the actual termination notices he received from PPL, but, again, has failed to present sufficient evidence that these notices were improperly sent to him by PPL.

Mr. Moyer provided in Moyer Exhibit Number 1 the following detail regarding PPL's activities regarding termination of his accounts:

- October 5, 2015: Mr. Moyer received a letter from PPL notifying him of the company's intent to terminate electric service at the solar panels.
- October 7, 2015: PPL agreed to cancel the termination.
- October 19, 2015: Mr. Moyer received a second 10-day shut off notice from PPL dated October 15, 2015.
- October 22, 2015: Mr. Moyer received a phone call from PPL demanding immediate payment of his residential bill and informing him of PPL's intention to terminate electric service.

See, Moyer Exh. No. 1.

In response, PPL witness Nalesnik testified that, as an initial matter, although Mr. Moyer has an open complaint against PPL at the Commission, he is still obligated to pay his current bills after the complaint was filed and that the termination notices were sent because he was not paying the undisputed charges. Tr. 41-42. Ms. Nalesnik added that Mr. Moyer had an overdue balance of \$788.32. PPL Exh. No. 1; Tr. 42-43. Ms. Nalesnik testified that PPL has never terminated service to either of Mr. Moyer's accounts because a litigation hold was put in place when the complaints were filed. Tr. 45-46. Ms. Nalesnik noted, however, that the litigation hold expired in this instance due to the length of the litigation concerning Mr. Moyer's complaints. Tr. 46-47. After the litigation holds expired, PPL put new litigation holds on the account. Tr. 47.

Chapter 56 of the Commission's regulations governs termination of residential utility service. For example, Section 56.81 allows public utilities to notify customers and terminate service provided to a customer after notice has been provided for nonpayment of an undisputed delinquent account. 52 Pa.Code § 56.81(1). Prior to terminating service, a public utility is required to provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. 52 Pa.Code § 56.91(a). Such notice remains effective for 60 days. 52 Pa.Code § 56.91(a). The Commission's regulations detail extensive specific information that must be included in the termination notice in conspicuous print, clearly and fully. 52 Pa.Code §§ 56.91(b)(1)-(18). Finally, the Commission's regulations also provide requirements for personal contact, procedures immediately prior to termination, and when no contact can be made with the customer, among other things. 52 Pa.Code §§ 56.93-56.100.

When viewing the record evidence in this case, it is clear that the evidence presented by Mr. Moyer regarding the termination notices he received is outweighed by the evidence presented by the Company. PPL sent the termination notices in compliance with the Commission's termination notice regulations after the litigation hold the company put on the accounts had expired. The litigation holds expire after 18 months. In most instances, litigation would conclude within that time period. In this instance, however, litigation continued after 18 months and, therefore, the termination notices were sent even though litigation was pending. PPL corrected this error as soon as it was discovered and put in place an additional litigation hold. Although no one likes to receive a termination notice incorrectly, PPL's actions were not unreasonable in that the company corrected the error that occurred in this unusual situation as soon as it was discovered. Mr. Moyer's arguments to the contrary will be rejected.

Finally, it is noted that, with regard to Mr. Moyer's averment in his complaint that he had not been credited the \$788.32 that the Commission directed PPL to credit him in the May 19, 2016 Order, this argument is also without merit because PPL has subsequently given Mr. Moyer the required credit. PPL Exh. No. 11; Tr. 28-29. This portion of Mr. Moyer's complaint will also be denied.

As a result, Mr. Moyer's complaint must be dismissed because he has failed to satisfy his burden in this case to demonstrate that PPL violated the Public Utility Code, a Commission order or regulation, or a Commission-approved tariff of the company. The evidence presented by PPL in this case in response to Mr. Moyer's complaint outweighs the evidence presented by Mr. Moyer in support of his complaint and Mr. Moyer failed to rebut PPL's evidence. For example, the entirety of Moyer Exhibit Number 2 constitutes his complaints about procedural matters and how the Commission has handled his complaint. Moyer Exh. No. 2. Although PPL did not object to the admission of Moyer Exhibit Number 2 into the record of this proceeding, these arguments do not weigh on whether PPL violated the Public Utility Code or a Commission order or regulation. None of those arguments are relevant to the underlying issue of whether PPL's actions at any time violated the Public Utility Code, the Commission's orders or regulations or a Commission-approved tariff of the Company.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. A complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

4. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

5. The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

6. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

7. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

8. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa.Super. 278, 166 A.2d 96 (1961); and Murphy v. Dept. of Public Welfare, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

9. "Virtual meter aggregation" is the combination of readings and billings for all meters regardless of rate class on properties owned or leased and operated by a customer-generator by means of the electric distribution company's billing process, rather than through physical rewiring of the customer-generator's property for a physical, single point of contact. Virtual meter aggregation on properties owned or leased and operated by a customer-generator and located within 2 miles of the boundaries of the customer-generator's property and within a single electric distribution company's service territory shall be eligible for net metering. 52 Pa.Code § 75.12.

10. "Net metering" is the means of measuring the difference between the electricity supplied by an electric utility or electric generation supplier and the electricity generated by a customer-generator when any portion of the electricity generated by the

alternative energy generating system is used to offset part or all of the customer-generator's requirements for electricity. 52 Pa.Code § 75.12.

11. Bald assertions, personal opinions or perceptions do not constitute evidence. Orlando Rivera v. Philadelphia Gas Works, Docket No. C-2010-2164222 (Order entered January 12, 2012).

12. Section 56.81 allows public utilities to notify customers and terminate service provided to a customer after notice has been provided for nonpayment of an undisputed delinquent account. 52 Pa.Code § 56.81(1).

13. Prior to terminating service, a public utility is required to provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. 52 Pa.Code § 56.91(a).

14. The Commission's regulations detail extensive specific information that must be included in the termination notice in conspicuous print, clearly and fully. 52 Pa.Code §§ 56.91(b)(1)-(18).

15. The Commission's regulations provide requirements for personal contact, procedures immediately prior to termination, and when no contact can be made with the customer, among other things. 52 Pa.Code §§ 56.93-56.100.

16. Mr. Moyer has failed to satisfy his burden to demonstrate that PPL has violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company with regard to the service provided at the service address.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal complaint filed by Larry Moyer against PPL Electric Utilities Corporation at Docket Number C-2015-2511904 is hereby denied.
2. That this matter is marked closed.

Date: April 12, 2018

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge